

No. 15123

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

W. A. ROBISON, Administrator of the Estate of ROBERT
SIDEBOTHAM, deceased, ROBERT SIDEBOTHAM and
JAMES SIDEBOTHAM,

Appellants,

vs.

HELENE MARCEAU SIDEBOTHAM,

Appellee.

APPELLEE'S PETITION FOR REHEARING.

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APPELLEE'S PETITION FOR REHEARING.

*To the United States Court of Appeals for the Ninth
Circuit, and the Judges thereof:*

Appellee Helene Marceau Sidebotham, presents this,
her petition for a rehearing in the above entitled cause,
upon the following ground:

1. That incorrect principles of law have been applied
in the interpretation of the scope of the determinable issues
in the State Probate Court judgment which is admittedly
the decisive issue on this appeal, and *res adjudicata*.

The Order and Judgment of the State Probate Court.

“ . . . ORDERED, ADJUDGED AND DECREED by the court that Robert Russell Sidebotham, alias, died intestate on the 21st day of December, 1951, leaving surviving as his only heirs at law and the only persons entitled to distribution of said estate Robert E. Sidebotham and James J. Sidebotham, the sons of said decedent; that thereupon the estate of said decedent descended to his said heirs at law and is now vested in them, subject to administration, share and share alike, and each of said persons is entitled to distribution of one-half of said estate when said estate shall be in a condition to be closed.

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the petition of Helene Marceau Sidebotham be and the same is hereby denied.”

Appellee had filed an alleged “Claim of Interest” in the Estate of Robert Sidebotham, deceased, before the probate division of the State Superior Court in San Francisco, which rendered the above judgment and order, in the manner set forth in point 2, of the Court of Appeals opinion. Thereafter, the Appellee realized that by virtue of the “subject matter” involved she was in the wrong court so she thereupon, on October 10, 1952, 26 days before December 4, 1952, which was the date the Probate Court heard the above matter, filed another action and other pleadings before the same Superior Court, but not in probate, which pleadings were thereafter served upon Appellants prior to the probate hearing. Said second action is the case at bar on appeal, which was removed from the State Court, to the United States District Court for trial.

It was obvious to Appellee that if she had originally proceeded in the probate division of the Superior Court, on her first petition "claiming adversely to the estate," that said Probate Court would have promptly dismissed the case as to her because she asserted in her petition that she was *not the widow of the decedent*. It was obvious to Appellee that she could not confer jurisdiction on the Probate Court, if it lacked jurisdiction (*Sampell v. Superior Court*, 32 Cal. 2d 763, 766) to adjudge her status as a widow. Since she was not entitled to be heard, she abandoned her abortive petition and effort in the Probate Court, pursued it no further, and elected to proceed with the case at bar instead. Appellee assumed that the probate hearing would simply go off calendar.

The jurisdiction of the Probate Court on her original petition was limited to the establishment of a status, the status of an heir to decedent, or a person entitled to receive by distribution. By her own allegations in said petition to the effect that she was not the widow of the decedent Appellee had precluded said Probate Court from assuming jurisdiction of the "subject matter" since Appellee excluded herself in privity by the said allegations of her petition. (*In re Van Deusen's Estate*, 30 Cal. 2d 285, 291.)

An allegation of privity to and with the estate of the decedent was of the very essence of the subject matter which was indispensable to have given the State Probate Court jurisdiction of the subject matter, under California Probate Code, Section 1080.

On December 10, 1953, a Judge of the Superior Court signed a "decree establishing heirship" upon said petition of Appellee. Appellee's petition in said Probate Court

was denied because she was not an "heir." Neither Appellee nor her counsel were present in court at the time of the alleged hearing. No evidence was introduced. As pointed out by this Appellate Court's decision, Appellee appeared by "her petition" only, which was a "writing" which contained certain legal conclusions, and a prayer that it be determined that all of the property belong to her. Said petition asserted that her marriage to the decedent had been "dissolved by a court of competent jurisdiction." It stated therein that the decedent had "died intestate during the month of December 1951," and further stated that Appellee and the decedent were divorced on "November 14, 1946" which was five years before the decedent died.

The opinion or decision of said Probate Court appears at point 3 of the Ninth Circuit Court's decision and is incorporated hereinabove. Said opinion decided only one thing, to-wit: That the decedent only had two heirs, entitled to distribution, *i.e.*, his sons. When said Probate Court adjudged that the two sons of the decedent were his only heirs, UPON THE PETITION OR CLAIM OF INTEREST filed by the Appellee it also adjudicated of necessity, that the Appellee was not the heir of the decedent. Said Probate Court opinion went no further than to establish heirship, and its judgment is *res adjudicata*, that Appellee was not an heir BUT A STRANGER TO THE ESTATE.

The concluding portion of the opinion of said State Probate Court in the form of an omnibus denial that the "petition of Helene Marceau Sidebotham be and the same is hereby denied" in and of itself added nothing to the actual opinion of the Court of Appeals in the paragraph which preceded the same.

Appellee has no quarrel with the authorities noted by the Court of Appeals of and concerning *res adjudicata*, and Appellee is in agreement with the correct statement of the law by Justice Fields, that a person is bound as "to every admissible matter which might have been presented" and upon "all matters involved in the issue which might have been litigated and decided in the case." Appellee, as a stranger not in privity with the decedent, could not have offered, nor would any offer have been admitted by the State Probate Court, to recognize her as a claimant entitled to distribution.

When Appellee framed the issues on her petition before the Probate Court and affirmatively alleged that the decedent had died five years after her divorce from him which was by a court of "competent jurisdiction," she simply failed to state a cause of action upon her petition for heirship and claim of interest. The Probate Court had neither the power nor authority to render a favorable judgment upon the claim, unless a cause of action had been stated and its sole remaining function was to dismiss or deny it. It could have been dismissed by mandate, or even by demurrer. Since Appellee alleged that she was not the decedent's widow, no evidence was admissible to prove the contrary. Since she alleged she was not the decedent's widow, there was no ground to the contrary which she could have presented. Since she alleged she was not the decedent's widow, there were no issues available to her upon which she could litigate any claim to heirship or distribution. The fact that she claimed that certain community property had accumulated under a "former marriage" to the decedent, would not have authorized the Probate Court, or given power to the court, to decide that she was entitled to the same, as decedent's heir, or

as decedent's widow, since such a judgment would have been void, and a nullity, and therefore not *res adjudicata*.

It is respectfully submitted, that the reasoning of the Court of Appeals, on the face of its printed opinion, ought to be reexamined in consonance with the correct principles of law applicable and particularly its conclusion that the claim of Appellee of and concerning community property placed her in privity with the estate, in the light of her allegations that she was claiming the same adversely to the estate and not in privity with the estate. Appellee is certain that the State Probate Court could not have considered, nor could Appellee have offered into evidence, the claims which she has in the separate action at bar, as a stranger to the estate, and not in privity therewith!

If this Honorable Circuit Court of Appeals were to determine upon a rehearing, upon oral argument, that the Probate Court adjudicated that the Appellee was not an heir, and was a stranger to the estate, and that no other issues could have been determined upon the petition as framed, excepting the question of heirship, and that the opinion of the Probate Court went no further than to determine heirship, as in fact, is the case, then of necessity the opinion of the Honorable Circuit Court of Appeals ought be modified to conform with the authorities concerning the scope of the doctrine of *res adjudicata* within the purview of Mr. Justice Fields opinion in *Cromwell v. County of Sac.*, 94 U. S. 351, from which opinion the Court of Appeals has quoted.

While the quotation of the Court of Appeals, from the case of *Augisola v. Arnaz*, 51 Cal. 45, reads that the "Probate Courts have exclusive jurisdiction of the final distribution of the estate of decedents . . . and such decree of distribution of an estate, after due notice by the Probate Court, is conclusive upon a person who might have claimed that a share of the estate belonged to him," the following cases clarify and clearly distinguish the point involved here to the effect that no one claiming properties adversely to an estate which properties have been included in the estate, is bound by the Probate Courts order of distribution.

Estate of Dabney, 37 Cal. 2d 672;

Texas v. Bk. of America, 5 Cal. 2d 35, 46;

Shaw v. Palmer, 65 Cal. App. 441.

Determination of Heirship Was Limited Subject Matter of Probate Court Controversy.

California Probate Code, Chapter XVII, entitled "Determination of Heirship," Section 1080, reads as follows:

" . . . the executor or administrator, or any person claiming to be an *heir* of the decedent or *entitled to distribution* of his estate or any part thereof may file a petition setting forth his claim . . . and praying that the court determine who are entitled to distribution of the estate."

The definition of an "heir" according to Section 108 of the California Probate Code, is one "who would be entitled to succeed to the property . . . according to the provisions of Division II of this code."

Persons who are entitled to distribution, are described in California Probate Code, Chapter XVI, as heirs de-

visees, legatees, or the assignee, grantee, or successor in interest of any heirs, devisee or legatee.

A divorced wife is not included within the provisions of Division II of the California Probate Code or within the description of a person entitled to distribution of a decedent's estate.

Under this section regulating procedure for determination of heirship, a petitioner is not entitled to be heard unless he claims to be an heir, and when such claim is made, the court acquires jurisdiction to determine heirship and also the interest of each respective claimant to the estate.

In re Van Deusen's Estate (1947), 30 Cal. 2d 285, 291, 182 P. 2d 565.

Probate proceedings are purely statutory and special in their nature, so that the Superior court, although a "court of general jurisdiction," is circumscribed in heirship proceedings by this chapter conferring jurisdiction and may not competently proceed in a manner essentially different from that provided by this chapter.

Bales v. Superior Court of Los Angeles County (1942), 21 Cal. 2d 17, 24, 129 P. 2d 685.

Where a petition to establish heirship has been filed and the notice prescribed by this section and 1200 has been given, the probate court has jurisdiction to proceed with the whole matter of heirship in the decedent's estate. It is a decree not *in persona* in favor of one party against another but only declares the status of a *res*, to-wit: privity with the estate.

Lane v. Superior Court in and for Siskiyou County (1950), 98 Cal. App. 2d 165, 167, 219 P. 2d 497.

Wherefore, petitioner respectfully urges that a rehearing be granted and that the mandate of this court may be stayed pending the disposition of this petition.

MANUEL RUIZ, JR.,

Attorney for Appellee.

Certificate of Counsel.

The undersigned Attorney for Appellee certifies that in his judgment the above Petition for Rehearing is well founded, and that it is not interposed for delay.

MANUEL RUIZ, JR.,

Attorney for Appellee.

